the hirer's testimony was superfluous. This hirer, who had already paid over $3,000 (or more than half the cost of the car) had elected to abandon all claim thereto, rather than give evidence himself as to the absence of knowledge of or connivance in the use to which the car was put by the accused, Chong Ah Kow. The hirer cannot reasonably be expected voluntarily to incriminate himself, notwithstanding the provisions of section 132 of the Evidence Ordinance. Hence the appellants were not guilty of any remissness by not calling him to give evidence, against his own interest, of a breach of contract in order to establish their right to the car. If he was not in breach of the hire-purchase agreement and was innocent of any complicity in an offence against the Dangerous Drugs Ordinance, why should he have voluntarily chosen to allow his claim to go by default to the appellants? To this question there can be only one answer.

With regard to the second ground, there is nothing in the record to show that the appellants received any of the instalments, after seizure of the car, with knowledge of such seizure by the customs. The notice under section 30(3) was in fact issued on September 18, 1964. Hence I fail to see how the appellants can be prejudiced by their acceptance of instalments from July to September 1, 1964. Indeed the continuance of payments by the hirer, after seizure of the car, is positive corroboration of the evidence of the appellant's manager that deception was practised on him to conceal the illegal user of the car.

On this point I would go even further. In subsection (7) of section 30 I should point out that the owner is the person entitled to the possession *"immediately before seizure"*. These last three words are not meaningless verbiage. As Hill J. said in *Public Prosecutor* v. *Patani Motors Co. Ltd.*,[1] referring to *Jelks* v. *Hayward*,[2] "the hirer's interest in the goods ceased on the seizure and the owners thereupon became entitled to the possession under the agreement." In my view, once the appellants' right to possession had accrued "immediately before seizure" of the vehicle, their subsequent acceptance of hire payments — even with knowledge of such seizure — was entirely irrelevant for the purposes of an inquiry under section 30(3). As an innocent party at the relevant time their rights cannot be prejudiced by their subsequent conduct, unless their claim was contested by the hirer himself: see *Public Prosecutor* v. *Eu Tong Sen Finance Co. Ltd.*[3] The decision rests on the hirer, and on him alone, whether or not to claim repayment from the company: the question concerns only the parties themselves.

In conclusion I think it will not be out of place to point out that *Public Prosecutor* v. *Ng Chong Sooi*,[4] referred to by the president, has no application in the instant case because, on its peculiar facts, there was an agreement for bailment of the car by Ng Chong Sooi, the claimant, to Chan, the person convicted under section 6 of the Dangerous Drugs Ordinance, "which was to subsist for at least as long as Chan paid the hire-purchase instalments" on the car which he purported to have sold to Ng Chong Sooi. Chan had kept up the payments to the date of seizure and he was accordingly the person entitled to possession.

The appeal is accordingly allowed, and the order of the learned president set aside. I order the return of the motor car to the appellants.

Appeal allowed.

Solicitor: *Chang Min Tat.*

HAJI WAN OTHMAN & ORS. v. GOVERNMENT OF THE FEDERATION OF MALAYA

[O.C.J. (Suffian J.) February 14, 1965]

[Alor Star — Civil Suit No. 6 of 1963]

Administrative law — Pensions — Member of public service holds office during pleasure of Head of State — No right to pension — Pensions legislation merely permissive — Malaysia Constitution, art. 132(2A) — Pensions Ordinance, 1951, ss. 3, 5, 11 — Pensions Regulations, 1957, regs, 5, 15.

Constitution Law — Member of public service holding office at pleasure of Head of State — Whether State under obligation to pay pension — Malaysia Constitution, art. 132(2A).

Pensions — Pensions Ordinance, 1951, ss. 3, 5 and 11.

The plaintiffs were members of the public service who had retired from the service on pensions. On retirement each of them was offered and paid in lieu of full pension (a) a reduced pension for life at the rate of 3/4 of his full pension and (b) a lump sum gratuity equal to ten times the value of the surrendered portion of his pension. Each of the plaintiffs outlived ten years after their retirement and they sought a declaration that they were eligible for the full money value of the full pension for the remaining period of their lives.

Held: (1) the whole tenor of the pensions legislation is permissive and no officer has therefore an absolute right to pension;

(2) as the plaintiffs had been paid the gratuity in lieu of their pension, they had forfeited their eligibility for the full pension;

(3) therefore the court must decline to make the declaration sought.

Case referred to:—

(1) *Pusey* v. *Sir Edward Desbouvrie* 24 E.R. 1081.

CIVIL SUIT.

O. L. Phipps and *Lim Ewe Huat* for the plaintiffs.

Au Ah Wah (Senior Federal Counsel) for the defendants.

Cur. Adv. Vult.

Suffian J.: I had some difficulty in deciding from the pleadings alone what it is I am asked to declare but during the course of the hearing it became clear that what I am asked to declare is this, that if before a public officer retires on a pension he opted to draw a gratuity (followed by a reduced monthly pension) then he may be paid the reduced pension only during the period of ten years immediately following his retirement but after the expiration of that period he should be paid his full pension.

The admitted facts are that the plaintiffs and several persons on whose behalf they sue were members of the public service and at different dates retired from various services on pensions which under the present constitutional arrangements are a liability of the Federal Government.

They became eligible for pensions according to the scale fixed by paragraph 5 of the Pensions Regulations 1951 subject to section 11 of the Pensions Ordinance, 1951. When retiring, each of them was offered and paid in lieu of the full pension (a) a reduced pension for life at the rate of ¾ of his full pension and (b) a lump sum gratuity equal to ten times the value of the surrendered portion of his pension. That was over ten years ago. Each of the plaintiffs outlived ten years after their retirement, though by the date of the trial only plaintiffs numbers 2, 4, 7 and 8 were still living. It is argued that each of the plaintiffs and every pensioner in the same position should now be paid their full pension because:

(a) they are eligible for the full money value of the full pension for the remaining period of their lives, having regard to the language of paragraphs (1) and (3) of regulation 15 of the 1951 Pensions Regulations read together and having regard to the aims and objects of section 3 of the Pensions Ordinance, 1951, and the protection of pension rights under the Federal Constitution;

(b) there is no provision in the pension laws for the commutation of a pension; and

(c) a gratuity is a loan from Government to a retiring officer to enable him to buy a house and so on, he repays the loan by accepting only 3/4 of his pension for ten years after his retirement, thereafter the loan having been fully repaid Government has no further right to reduce his pension, for such reduction is tantamount to Government receiving more than what it has lent him and there is no consideration for this excess receipt.

It is said that the pensions laws do not use the word "commute', where a pension is awarded and the power to commute given, the word "commute" should be used, as is done in some English statutes cited before me, and therefore the pensions of the pensioners involved could not be commuted. It is further said that this is in accordance with S.S. General Orders 1921 which say that "pensions....can in no case be commuted." In allowing the so-called commutation in this case the old Government acted against their own instructions and the pensioners concerned should not be made by the present Government to suffer for the mistake of the old Colonial Government.

It is also said that a retired public servant draws a pension every month for life, the total amount he is to draw cannot be known until after his death, and if he is to surrender part of his pension in exchange for a gratuity and a reduced pension, for the surrender to be valid he must know exactly what he is surrendering, and as none of these pensioners knew or could have known at the time he retired exactly what he was surrendering, the purported surrender was invalid and *Pusey* v. *Sir Edward Desbouvrie* [1] is cited in support.

In determining this question it is in my opinion sufficient only to examine the nature of Government pensions. There is no doubt that it is in Government's interest to pay pensions because they ensure devoted service and the retention of the service of experienced and skilled officers, but pensions are not payable by Government because of a contract with its employees; they are payable by virtue of the Pensions Ordinance, 1951, and its predecessor from which it departs little if at all. The Ordinance does not say that when a public servant has worked so many years at such and such a salary he shall be entitled to receive so much pension a month from Government.

Section 3(1) merely says that it shall be lawful for the relevant authority "to make regulations for the granting of pensions, gratuities and other allowances to persons who have been in the public service...." Section 4 says that these pensions, gratuities and allowances are charged on the general revenues of the Government.

Pension regulation 5 says that every pensionable officer who has served not less than ten years may on his retirement be granted a pension and then it proceeds to give the formula for calculating the rate of the pension payable.

Not a word is said about the officer being entitled to anything, the whole tenor of the legislation being permissive, the relevant authority being merely authorised, not compelled, by the legislature to do this and that for the retired officer.

It is undoubted that legally a member of the public service holds office during the pleasure of the Head of State, even before the enactment of clause (2A) of Article 132 of the Constitution, and he may therefore be retired or dismissed without compensation.

Should there be any doubt about this, section

5 of the Ordinance in the most emphatic terms provides:

"(1) No officer shall have an absolute right to compensation for past services or to any pension, gratuity or other allowance under this Ordinance, nor shall anything in this Ordinance contained limit the right of the Federal Government or, as the case may be, of the Government of any State to dismiss any officer without compensation.

(2) Where it is established to the satisfaction of the Yang di-Pertuan Agong that an officer has been guilty of negligence, irregularity, or misconduct, it shall be lawful for the Yang di-Pertuan Agong to reduce or altogether to withhold the pension, gratuity or other allowance for which such officer would have become eligible but for the provisions of this section."

In view of these very explicit provisions I do not see how I can declare that these pensioners who were paid a lump sum gratuity and have lived more than ten years after their retirement are entitled to draw their full pension on the expiration of that ten year period until their death. My view is reinforced by consideration of the Pensions Regulations, regulation 15 of which reads:

(1) An officer to whom a pension is granted under the Ordinance may, at his option exercisable as hereinafter provided, be paid, in lieu of such pension, a pension at the rate of three-fourths of such pension together with a gratuity equal to ten (later this was amended to read 12½) times the amount of the reduction so made in the pension.

Note again the permissive "may....be paid", and note also that the officer may be paid a reduced pension and lump sum gratuity "in lieu of such pension", i.e. in lieu of the full pension. There is nothing here which requires or even authorises the relevant authority to resume payment of full pension to such officers as survive ten years after their retirement. In my judgment the word "in lieu of such pension" clearly shows that once an officer has received a gratuity (followed by a reduced monthly pension) he forfeits altogether his eligibility for a full pension. Paragraph (3) of regulation 15 makes this clear beyond doubt by providing —

" . . . if an officer has exercised the option, his decision shall be irrevocable so far as concerns any pension to be granted to him."

This can only mean this, that once an officer has opted to draw a reduced pension and a gratuity, he cannot at any later stage change his mind and ask for something better and he certainly cannot draw his full pension ten years after his retirement.

There is little doubt that originally an officer could only draw his full pension (he could not draw a lump sum gratuity and retire on a reduced pension) and equally there is little doubt that the law was changed in 1926 to enable officers (who have lived most of their working lives in Government quarters) to buy a house immediately they retire. But though the quantum of the gratuity was calculated by reference to ten years, I do not think that the gratuity could be regarded as an advance or a loan and that after Government has recouped it by reducing the officer's pension by a quarter for ten years Government is then obliged or authorised to pay the officer his full pension. That it is not a loan is made clear by the fact that it is not payable by the officer's estate should he die within ten years of his retirement.

If I am right in my interpretation, pensioners would do well to consider pursuing their cause in Parliament rather than in the courts. Pensions are paid out of public money and under the Constitution no public money may be expended without legislative authority and the only legislative authority in existence today does not permit the executive to pay a pensioner his full pension if he has ever taken a gratuity. Only Parliament may enlarge this authority.

In case there should be an appeal I now proceed to record my findings of fact as regards the evidence.

Syed Bahaldin bin Syed Noh (the fourth plaintiff) before retiring in 1932 signed an option form which was not explained to him. When he was near retiring age Sir George Maxwell then Chief Secretary told him that he would get a gratuity equal to ¼ pension for ten years and after ten years the matter would be considered then. He received a gratuity and thereafter was and is paid a reduced pension. He knew of the existence of the pension laws but had never read them. In my judgment his eligibility for a pension is in no way affected by any impressions obtained by him from his conversation with Sir George.

Ali bin Taib (the seventh plaintiff) also signed an option (exhibit P-1) before retiring from the Trengganu Clerical Service in 1948, which form had not been explained to him, and was paid a gratuity and thereafter a reduced pension. It being common ground that the Trengganu pension laws then applicable were the same as current pension laws, I am of the opinion that the fact that this plaintiff had never been explained P-1 made no difference, because once he drew a gratuity and a reduced pension the paying authority is not permitted to pay him his full pension should he live more than ten years after his retirement.

Mohamed Ismail bin Che Mat, PW3, also signed an option form which had not been explained to him before retiring in 1948 as Chief Superintendent, General Post Office, Penang. The law was amended in 1926 to enable officers to draw a gratuity as well as a pension so that they could buy a house if they wished. The amendment was inspired or sponsored by Sir

George Maxwell who hoped that Government would pay an officer who took a gratuity and lived more than ten years, his full pension after ten years. Even if true, this (in my view) does not alter the fact that the matter is governed solely by a construction of the pension laws.

Mohamed Hashim bin Saad, PW4, retired from the service of what is now Malaysian Railways in 1933 and signed the option form also under the impression (given by the Station Master, Ipoh) that should he survive ten years after his retirement he would draw his full pension. Witness had never read the pension laws.

Haji Laidin bin Haji A. Manaf, PW5, long before he retired (in 1952) as the Director of Lands, Kedah, heard that Government was going to amend the pension law (which he had never read) to provide for the payment of a full pension to an officer who retired with a gratuity, should he live more than ten years after his retirement. Before he retired he signed an option form, thinking that after ten years he would draw full pension.

Mohamed bin Haji Babjee, PW6, also signed the option form thinking that should he live more than ten years after retiring he would draw full pension.

The effect of the evidence led concerning Captain E. A. Staines who retired in 1935 from the Post Office Penang was that he exercised his option and subsequently revoked it before he actually retired. I do not see how this can affect the position because the law clearly says that an option exercised may be revoked before retirement.

In the event, the court declines to make the declarations sought and orders the plaintiffs to pay the defendant's taxed costs.

The court declined to make the declarations.

Solicitor: *Khoo Eng Cheang.*

ATTORNEY-GENERAL OF CEYLON v. REID

[P.C. (Viscount Dilhorne, Lord Hodson, Lord Guest, Lord Upjohn) December 15, 1964 and February 15, 1965]

[Privy Council Appeal No. 18 of 1964]

Criminal Law — Bigamy — Locally domiciled Christian couple — Marriage according to Christian rites — Husband's subsequent conversion to Muslim faith — Husband contracting second marriage notwithstanding earlier subsisting monogamous marriage — Personal law of locally domiciled inhabitants — Right of inhabitants to change their religion and personal law — Recognition of polygamous marriages by law — Abrogation of inherent rights — Ceylon Penal Code, s. 362B.*

* This section corresponds to section 494 of the local Penal Code.

Husband and Wife — Marriage — Polygamous marriage — Muslim law — Christian marriage in Ceylon — Subsequent conversion of husband to Muslim faith — Polygamous marriage during the life time of wife — Validity of.

The respondent, Allen Ellington Reid, who was at all material times domiciled and resident in Ceylon, married Edna Margaret de Witt according to Christian rites at St. Mary's Church, Badulla, Ceylon on September 18, 1933. Both were Christians at the time and they lived together as man and wife until 1957. There were eight children of the marriage.

On June 13, 1959 the respondent and a divorced lady of the name of Fatima Pansy were converted to the Muslim Faith. A month later on July 16, 1959 they were duly married in the District of Colombo by the Registrar of Muslim Marriages under the provisions of the Muslim Marriage and Divorce Act, 1951, notwithstanding that the respondent's earlier marriage was subsisting.

On October 28, 1961 the respondent was prosecuted in the District Court of Colombo for the offence of bigamy under section 362B of the Ceylon Penal Code which so far as relevant is in these terms:—

> "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

He was duly convicted and sentenced to three months' imprisonment. The respondent's appeal to the Supreme Court of Ceylon was allowed and his conviction quashed. The Attorney-General of Ceylon appealed to the Privy Council.

Before the Judicial Committee of the Privy Council, the sole question was whether the second marriage was void by reason of its taking place during the life of the respondent's first wife. For the Attorney-General it was argued that the respondent had entered into a monogamous marriage and was incapable of re-marrying until it had been legally dissolved or declared void. It was suggested that a person who enters into a monogamous Christian marriage not only enters into a contract but acquires as a result a status, recognised throughout Christendom, that it must be the voluntary union for life of one man and one woman to the exclusion of all others, and that status cannot be changed and no new marriage of any sort can be contracted by either spouse until the marriage is dissolved by a procedure recognised as applicable to monogamous marriages even if both parties change to the Muslim religion.

For the respondent it was argued that the status arising out of a contract of marriage is one to which each country is entitled to attach its own conditions both as to its creation and duration. It was submitted that there was nothing in any statute in Ceylon which rendered the second marriage invalid and nothing in the general law of that country which precluded the husband from altering his personal law by changing his religion and subsequently marrying in accordance with that law, if it recognised polygamy notwithstanding an earlier subsisting monogamous marriage.

Held: Ceylon is a country of many races and creeds and has a number of Marriage Ordinances and Acts. In matrimonial matters there is no one law which applies to all locally domiciled persons; they are governed by their personal laws. A Christian monogamous marriage does not prohibit for all time during the subsistence of that marriage a change of faith and personal law on the part of a husband resident and domiciled there. In such countries there is an inherent right in the inhabitants domiciled to change their religion and personal